

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

UNITED STATES OF AMERICA	:	
	:	CRIMINAL ACTION NO. 02-569
v.	:	
	:	CIVIL ACTION NO. 04-5943
DAHELAK BEREKET MANNA	:	

**Baylson, J.**

**August 17, 2005**

**MEMORANDUM**

The Petitioner in the above-captioned case, Dahelak Bereket Manna, plead guilty to one count of armed bank robbery and one count of using and carrying a firearm during and in relation to a crime of violence. Judge Van Antwerpen, then of this Court, subsequently sentenced Manna to 48 months incarceration on the first count and, because he had brandished a firearm during the armed robbery, 84 months incarceration on the second count. Manna's conviction was affirmed by the Court of Appeals on February 25, 2004, 92 F. App'x 880 (non-precedential), and became final ninety days later, at the expiration of the period provided under 28 U.S.C. § 2101(c) to apply for a writ of certiorari.

Following the Supreme Court ruling in United States v. Booker, 125 S. Ct. 738 (2005), Manna filed a pro se petition (Doc. No. 24) for re-sentencing pursuant to 28 U.S.C. § 2255. Manna alleges that the sentence imposed by the district court judge in the second count was unlawful because the facts the court relied upon were not found by a jury. Specifically, Manna asserts that the district court erred "by imposing a two year enhancement for 'brandishing' when

[Manna] was not indicted for or plead guilty to such an element under 18 U.S.C. § 924(c).”

(Reply to Govt. Resp., Doc. No. 29, at 2.) The entirety of Manna’s petition endorses the proposition that Booker should be retroactively applied to convictions that were final prior to the date on which Booker was handed down.<sup>1</sup>

In Lloyd v. United States, 407 F.3d 608, 610 (3d Cir. 2005), the Third Circuit considered whether the rule announced by the Supreme Court in Booker would apply retroactively, and definitively concluded that it would not. The court reasoned Booker would apply retroactively only if the rule were deemed “watershed,” a rule that implicates fundamental fairness and accuracy of the criminal proceeding. Id. at 612. Joining numerous other circuits, the court in Lloyd held that “because Booker announced a rule that is ‘new’ and ‘procedural,’ but not ‘watershed,’ it does not apply retroactively to initial motions under § 2255 where the judgment was final as of January 12, 2005, the date Booker issued.” Id. at 615-16. It is undisputed that Manna’s conviction was final before January 12, 2005. Therefore, the Booker decision does not invalidate Manna’s sentence and his 28 U.S.C. § 2255 petition must be dismissed.

An appropriate order follows.

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<sup>1</sup> In his reply, Manna insists that his petition did not ask this Court to apply Booker retroactively, but rather “invited this Court to review the language of [Booker] as guidance to make a constitutional determination on whether his sentencing . . . violated his Sixth Amendment rights.” (Reply to Govt. Resp., Doc. No. 29, at 1.) This vague protestation notwithstanding, Manna’s initial petition unequivocally seeks retroactive application of the principles announced in Booker, and his reply does not establish any legal grounds for relief.

It should also be noted that the Third Circuit decision affirming Manna’s conviction makes clear that under Harris v. United States, 536 U.S. 545 (2002), “brandishing” for the purposes § 924(c) need not be alleged in the indictment or proved beyond a reasonable doubt.

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**ORDER**

AND NOW, this 17th day of August, 2005, upon consideration of Dahelak Bereket Manna's petition for writ of habeas corpus (Doc. Nos. 24 and 27), the Government's response, and Petitioner's reply, it is hereby ORDERED that the petition is DENIED and the case be marked CLOSED.

BY THE COURT:

/s/ Michael M. Baylson  
Michael M. Baylson, U.S.D.J.